

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

ORDER

VICTOR CAUDILLO-MARQUEZ,

Defendant.
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GERSHON, United States District Judge:

This case is before me on remand from the Court of Appeals for the Second Circuit for further proceedings in conformity with *United States v. Booker*, 125 S.Ct. 738 (2005), and *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005). By order dated May 26, 2005, I instructed the parties that, in determining whether to resentence defendant, the court would consider whether, under the circumstances existing at the time that the original sentence was imposed, the original sentence would have been materially different had the United States Sentencing Guidelines (the "Guidelines") been only advisory, and directed the parties to brief the issue accordingly.

Having reviewed the parties' submissions, I now conclude that the original sentence imposed on defendant would not have been materially different had the Guidelines been only advisory. Therefore, a resentencing is not required and will not be ordered.

SO ORDERED.

/S/
NINA GERSHON
United States District Judge

Dated: Brooklyn, New York
July 19, 2005